IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 578 OF 2005
WITH
CIVIL APPLICATION NO. 668 OF 2005

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APPEAL FROM ORDER NO. 579 OF 2005
WITH
CIVIL APPLICATION NO. 669 OF 2005

Shri Mahesh K. Dhanani .. Petitioner

versus

Bombay Municipal Corporation & Anr. .. Respondents

...

Mr.S.P.Kanuga with Mrs.A.S. Bhaktwani for the appellants.

Ms.Geeta Joglekar for the respondent no.1.

Mr.Anil Singh with Mr.D.R. Shah for the respondent no.2.

CORAM : B.H. MARLLAPALLE,J

DATED : 16th August 2005.

P.C.:

1. Both these appeals were heard together by me and vide the earlier order dated 1st July 2005, the Asstt. Municipal Commissioner "A" Ward, Municipal Corporation of Gr. Bombay was directed to hear the appellants as well as the respondent society and submit his finding regarding the nature of the structure - in the past and as at present, the period/year of the alteration/erection and the size. While recording such findings, the earlier awards passed under the Maharashtra Co-operative Societies Act were also directed to be taken into consideration after hearing all the parties concerned. Accordingly, the Asstt. Commissioner of the respondent Corporation has submitted his finding, a copy of which has been made available to the learned counsel for the respective parties.

2. As per the findings submitted, the notice dated 7th July 1982 issued u/s.361 of the BMC Act pertained to the show cases with dimensions

1.40 mts. L X Full Ht x 2 Nos &
5.30 mts. L x 0.40 mtr. x 0.85 mts.Ht.

whereas the notices which are subject matters of challenge in the suit pending before the trial court have been issued u/s.55 of the MRTP Act, on 29th January 2005 and they pertain to the stalls with following dimensions.

2.8 mt. x 1.5 mt. x 4.1 mt. &
5.00 mt. x 1.5 mt x 4.1 mt. &
Wooden showcase - 0.60 mts. x 0.25 mts x
2.4 mts.

As per the report submitted by the Asstt. Commissioner, the stalls which were not in existence till 1982 have come up in place of showcases. The stalls could not figure in the survey sheet no. 25 VII, Edition 1969. The difference between showcases and stalls has been described by the Asstt. Commissioner in the following words:

> "There is vast difference between showcases and stalls. Showcases

> are meant for displaying and not for habitable purpose. A showcase may project on the ground or may even occupy floor space. However, a stall has horizontal as well as vertical dimensions and necessarily occupies floor space and is used for habitable commercial purpose. If a stall is put up unauthorisedly, it constitutes violation of FSI"

3. It has been further pointed out that the suit stalls are not only violative of the FSI But are also causing obstruction in the compulsorily open space and their existence is detrimental to the free movement of relief vehicles like Ambulance, fire engine etc. in addition to being an obstruction to the movement of residents, visitors and vehicles inside the society premises.

4. Thus, the prima facie view taken by the court below in declining the prayer for temporary injunction is supported by these findings submitted by the Asstt. Commissioner of the respondent

Municipal Corporation. Hence, the impugned orders cannot be termed as illegal or perverse. The challenge under the said order must fail at the threshold.

5. The appeals are therefore dismissed in limine. The order of ad-interim relief stands vacated. Civil Applications do not survive. However, the appellants be given a couple of days to shift the goods/articles from the stalls before the demolition is undertaken. It is clarified that the appellants are not precluded by this order from challenging the findings submitted by the Asstt. Commissioner.

B.H. MARLAPALLE, J